

# Exhibit A

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8 MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

9

10 JAMES P. HEALOW, CAUSE NO. DV 17-1250

11 Plaintiff, JUDGE MICHAEL G. MOSES

12 vs.

13 VOLKSWAGEN GROUP OF AMERICA,  
14 INC., ROBERT BOSCH GMBH, ROBERT  
BOSCH, LLC

15 **AMENDED COMPLAINT**  
(Montana State Law Claims Only)

16 Defendant.

17

18 Plaintiff alleges as follows:

- 19
- 20 1. Since at least 2009, Defendant Volkswagen Group of America (VW) intentionally  
21 violated the laws of the United States and the regulations of the United States  
22 Environmental Protection Agency (EPA) by selling automobiles in the United  
23 States that had a sophisticated software algorithm in the engine control module.  
24 The purpose of the software algorithm, defined in the Clean Air Act as a "defeat  
25 device," was to detect when a car's engine was being tested for compliance with  
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1           emissions standards, and switch the car to an operating mode that would enable  
2           the car to appear to pass vehicle emissions standards. At all times other than in  
3           emissions testing mode, the engine control module would suppress emission  
4           controls and switch the car's operating mode to emit up to forty times the quantity  
5           of nitrogen oxides allowed by federal emissions standards.

6           2. Nitrogen oxides are highly reactive gases that contribute to ground-level ozone,  
7           fine particulate, and nitrogen dioxide pollution. Exposure to these pollutants is a  
8           recognized cause of respiratory illnesses.

9           10. The EPA has established regulations with strict emissions standards, and every  
11           vehicle sold in the United States must meet these emissions standards to help  
12           control air pollution.

13           14. On September 18, 2015, the EPA sent VW a Notice of Violation informing VW  
15           that the EPA had discovered the defeat device in 2.0 liter diesel engines in at  
16           least the following diesel models of VW's vehicles (the "Violating Vehicles"):  
17           2009-2015 VW Jetta; 2009-2015 VW Beetle; 2009-2015 VW Golf; 2014-2015  
18           VW Passat; and 2009-2015 Audi A3.

19           20. Discovery may reveal that additional vehicle models and model years are  
21           properly included as Violating Vehicles.

22           23. Since VW introduced its 2.0L TDI Clean Diesel engine in 2008, VW has touted it  
24           as a "fantastic power train" that "gives very good fuel economy" that "is also good  
25           for the environment because it puts 25% less greenhouse gas emissions than  
26           what a gasoline engine would, . . . cuts out the particulate emissions by 90% and

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1 the emissions of nitrous oxide are cut by 95%, . . . [and is] clean enough to be  
2 certified in all 50 states." (Statement of Volkswagen Group of America, Inc.'s  
3 Chief Operating Officer Mark Barnes, to *The Business Insider*, October 9, 2009.)

4 7. Mark Barnes did not add that the VW clean diesel vehicles were engineered to be  
5 able to detect when they were being tested and to switch the manner in which the  
6 emissions system operated to be able to achieve those reductions in nitrogen  
7 oxides. Mark Barnes also did not disclose was that, after circumventing the  
8 emissions laws of the United States, every one of VW's clean diesel vehicles'  
9 emissions systems were programmed to run in a model that would result in up to  
10 40 times the allowable quantities of nitrogen oxides being released into the  
11 atmosphere under normal operating conditions.

12 8. VW relied on this fraud to position itself as the market leader in automotive diesel  
13 sales in the United States. According to VW's documents, VW had captured 78% of  
14 the automotive diesel sales in the United States by 2013.

15 9. VW also charged a premium for its Violating Vehicles, which VW marketed as  
16 "CleanDiesel." The 2015 Jetta base S model has a MSRP of \$18,780, for example,  
17 while the 2015 Jetta TDI S CleanDiesel model has a MSRP of \$21,640, a premium  
18 of \$2860.

19 10. VW's unlawfully fraudulent and unfair trade practices are detailed with greater detail  
20 and specificity in the complaint filed in the Amended Consolidated Consumer Class  
21 Action Complaint on file in U. S. District Court, Northern District of California, San  
22 Francisco Division Case No. MDL 2672 CRB (JSC), which by this reference is  
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1 incorporated herein. The complaint may be found online at this link:  
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4 https://www.boschvwsettlement.com/Content/Documents/Consolidated%20Consu  
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11. The EPA has directed VW to recall all the Violating Vehicles and repair them to  
12. comply with emissions standards. The repair will cause substantial changes in  
13. performance and efficiency in the Violating Vehicles, thus Plaintiffs' vehicles will no  
14. longer perform as they did when purchased and as advertised.  
15. 12. ROBERT BOSCH GMBH, ROBERT BOSCH, LLC were complicit in all ov VW's  
16. actions described in this amended complaint.

17. **JURISDICTION AND VENUE**

18. 13. Jurisdiction is proper in this Court because Plaintiff seeks not more than \$75,000 in  
19. damages (inclusive of costs and attorney's fees). All claims are based exclusively  
20. in Montana law. Plaintiff makes no federal law claims whatsoever.  
21. 14. Regarding the class litigation described below, VW notified Plaintiff by email,  
22. attached hereto as Exhibit 1, that his 2013 vehicle described below is not an eligible  
23. vehicle in the class and that "You are not a member of the class . . .". Plaintiff's  
24. 2010 vehicle is not eligible by express exclusion set forth in settlement ¶2.16(c)(i).  
25. Any effort by VW to remove or consolidate this case into the class action will be a  
26. violation of Rule 11, MRCivP and of its counterpart federal rule.  
27. 15. Venue is proper in this Court because Plaintiff is a resident of Yellowstone County  
28. and Defendants have sold Violating Vehicles and components thereof in  
Yellowstone County.

## PARTIES

16. Plaintiffs James P. Heallow is a citizen of Montana and resident of Billings, Yellowstone County, Montana who purchased at various times five different violating vehicle Volkswagen Jetta's. The two vehicles pertinent to this action are:

(a) a 2013 Volkswagen Jetta TDI diesel sedan VIN  
3VWLL7AJ6DM225060, was purchased through Copart in  
Billings, Montana, on October 5, 2015; and

(b) a 2010 Volkswagen Jetta TDI diesel sedan VIN  
3VWRL7AJ4AM027406, was purchased through Copart in  
Billings, Montana, on October 5, 2015.

Neither of the two vehicles are eligible vehicles as defined in the class settlement. Plaintiff is not an eligible class member with respect to either vehicle.

17. Plaintiff purchased all his Volkswagen Jetta TDI vehicles, in part, because of the "CleanDiesel" system as advertised by VW that touted the cleanliness of the engine system for the environment and the efficiency and power and performance of the engine system.
  18. Defendant Volkswagen Group of America, Inc. is a New Jersey corporation with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. At all times relevant to this lawsuit, VW manufactured, distributed, sold, leased, and warranted the Violating Vehicles under the

Volkswagen and Audi brand names in the Montana. VW and/or its agents designed, manufactured, and installed the CleanDiesel engine system in the Violating Vehicles. VW's corporate parent is Volkswagen Aktiengesellschaft, based in Wolfsburg, Niedersachsen, Federal Republic of Germany.

19. Defendants ROBERT BOSCH GMBH and ROBERT BOSCH, LLC are foreign  
6 corporations not registered to do business in Montana, but which does business  
7 in Montana as described in the preceding ¶¶14.

#### **TOLLING AND ESTOPPEL**

10. Any applicable statute of limitation has been tolled by VW's knowledge, active  
11 concealment, and denial of the facts alleged in this Complaint. Plaintiff could not  
12 have reasonably discovered the true, defective nature of the Violating Vehicles  
13 until a reasonable time after the EPA issued its notice of violation to VW. VW is  
14 further estopped from relying on any statute of limitation because of its  
15 concealment of the defective nature of the Violating Vehicles and their engines.  
16

#### **CLAIMS**

##### **Count One Fraud by Concealment (Montana state law)**

21. Plaintiff incorporates by reference all preceding paragraphs.  
22. The nondisclosure, misrepresentations, and/or concealment of material facts by  
23. VW to Plaintiffs, as set forth above, were known, or through reasonable care  
24. should have been known, by VW to be false and material and were intended by  
25. VW to mislead Plaintiff.  
26.  
27. VW intentionally concealed and suppressed material facts concerning the quality  
28.

1 of the Violating Vehicles.

- 2 24. VW engaged in a secret scheme to evade federal vehicle emissions standards  
3 by installing software designed to conceal its vehicles' emissions of the pollutant  
4 nitrogen oxide, which contributes to the creation of ozone and smog. The  
5 software installed on the vehicles at issue was designed nefariously to engage  
6 during emissions certification testing, such that the vehicles would show far lower  
7 emissions than when actually operating on the road. The result was what VW  
8 intended: vehicles passed emissions certifications by way of deliberately induced  
9 false readings. Apparently, VW's deliberate, secret scheme resulted in noxious  
10 emissions from these vehicles at 40 times applicable standards.  
11
- 12 25. Plaintiff reasonably relied upon VW's false representations. Plaintiff had no way  
13 of knowing that VW's representations were false and misleading. VW's defeat  
14 device was a sophisticated software algorithm, and Plaintiff could not detect  
15 VW's deception.  
16
- 17 26. VW had a duty to disclose these safety, quality, functionality, and reliability  
18 issues because it consistently marketed its Violating Vehicles as possessing  
19 certain performance and fuel economy characteristics and as being in  
20 compliance with all applicable federal and state emissions standards. VW  
21 marketed the Violating Vehicles as being "CleanDiesel." Once VW made  
22 representations to the public about safety, quality, functionality, and reliability, as  
23 well as about the performance and fuel economy characteristics of the  
24 "CleanDiesel" vehicles in particular, VW was under a duty to disclose these  
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omitted facts, because where one does speak one must speak the whole truth  
and not conceal any facts which materially qualify those facts stated. One who  
volunteers information must be truthful, and the telling of a half-truth calculated to  
deceive is fraud.

27. VW had a duty to disclose the emissions scheme it engaged in with respect to  
the Violating Vehicles because knowledge of the scheme and its details were  
known and/or accessible only to VW, because VW had exclusive knowledge as  
to implementation and maintenance of its scheme, and because VW knew the  
facts were not known to or reasonably discoverable by Plaintiff.
28. These concealed and omitted facts were material because they directly impact  
the safety, quality, functionality, reliability, and value of the Violating Vehicles.  
Moreover, concealed and omitted facts were material because they directly  
impact the value of the Violating Vehicles. Whether a vehicle conforms to  
emissions standards and whether an automobile manufacturer tells the truth  
about compliance with emissions standards are material concerns to a  
consumer.
29. VW actively concealed and/or suppressed these material facts, in whole or in  
part, with the intent to induce Plaintiff to purchase or lease Violating Vehicles at a  
higher price that did not reflect the Violating Vehicles' true value, and to pad and  
protect its profits and to avoid the perception that its vehicles did not or could not  
comply with federal and state laws governing clean air and emissions, which  
perception would hurt VW's image and cost VW money, and it did so at Plaintiff's

1 expense.

- 2 30. Plaintiff was unaware of these omitted material facts that were actively concealed  
3 and/or suppressed, in whole or in part, by VW with the intent to induce Plaintiff to  
4 purchase or lease the Violating Vehicles at a higher price that did not reflect the  
5 Violating Vehicles' true value.
- 6 31. If Plaintiff had known of these concealed and/or suppressed material facts, he  
7 would not have acted as he did, in that he would not have purchased purportedly  
8 "clean" diesel cars manufactured by VW, and/or would not have continued to  
9 drive their heavily-polluting vehicles, or would have taken other affirmative steps  
10 in light of the information concealed from him. Plaintiff's actions were justified.  
11  
12 VW was in exclusive control of the material facts, and such facts were not known  
13 to the public or to Plaintiff.
- 14 32. As a result of VW's conduct, Plaintiff has been damaged because the value of his  
15 Violating Vehicles has diminished as a result of VW's fraudulent concealment of  
16 its scheme to circumvent federal emissions standards, which has harmed the  
17 Volkswagen and Audi brand names associated with the Violating Vehicles.
- 18 33. Furthermore, based on information and belief, Plaintiff anticipates that if and  
19 when VW is compelled to bring the Violating Vehicles into compliance with  
20 federal emissions standards, as indicated by the EPA Notice of Violation, the  
21 Violating Vehicles will no longer possess the performance and/or fuel economy  
22 characteristics they were represented to possess at the time of sale.
- 23 34. VW wantonly, maliciously, oppressively deliberately, with intent to defraud, and in  
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reckless disregard of Plaintiff's rights engaged in a systematic and intentional  
scheme to defraud consumers and federal regulators by circumventing the laws  
of the United States, and the state of Montana, by designing a defeat device in  
the form of a software algorithm whose sole purpose was to make it appear that  
the Violating Vehicles complied with federal and state emissions standards when,  
in fact, they exceeded such standards by as much as 40 times. In perpetrating  
this scheme, VW was able to secure a 78% share of the automotive diesel  
market in the United States by representing their "clean diesel" vehicles to have  
performance and fuel economy characteristics that would not be possible if the  
Violating Vehicles complied with federal and state emissions standards, not to  
mention taking market share away from electric cars and cleaner burning hybrid  
and gasoline combustion cars by this fraud.

35. Based on information and belief, VW engaged in a course of conduct to ensure  
that employees, dealers, and agents did not reveal this scheme to regulators or  
consumers in order to facilitate its fraudulent scheme and enhance VW's  
reputation and that of the Violating Vehicles in order to sell more vehicles and to  
sell those vehicles at an inflated price.
36. Plaintiff purchased his non-eligible 2013 vehicle pertinent to this action through  
Copart in Billings on October 5, 2015, 17 days after the EPA first issued to VW a  
notice of violation regarding the matter, and 15 short days after VW made its first  
public admission of wrongdoing. Plaintiff did not know the pertinent facts which  
VW had fraudulently concealed on October 5, 2015 when he bought his violating

1 vehicle. Montana law allows plaintiff two years, until September 17, 2017, to  
2 discover VW's fraudulent behavior. VW subsequently was a defendant in a multi-  
3 district class action lawsuit filed on behalf of purchasers and owners of violating  
4 vehicles. VW settled that lawsuit with members of the settlement class being  
5 persons who owned violating vehicles prior to issuance of the EPA notice of  
6 violation. VW acted in bad faith and with malice toward plaintiff by excluding him  
7 from the class for no other reason than his inability to discover VW's fraud and  
8 duplicity even more quickly than the U.S. government agency charged with  
9 regulating VW was able to discover that fraud and duplicity.

- 10
- 11 37. Plaintiff purchased his non-eligible 2010 vehicle through IAAI in Billings on  
12 11/26/2014, well before VW's fraud was exposed. Plaintiff bought the vehicle as  
13 a project car. By the time the vehicle was potentially roadworthy, VW's fraud was  
14 well-documented, including the fact that violating vehicles pollute at up to 40  
15 times the legally allowable rate. Per ¶2.16(c)(i), p.6 , of the class settlement  
16 agreement plaintiff's 2010 vehicle has damage to its wiring harness causing in a  
17 lack of electricity to the fuel pump as a result of which the vehicle having been  
18 "not capable of being driven under the power of its own 2.0-liter TDI engine" at  
19 any time from the date plaintiff bought it to date. The vehicle's odometer reading  
20 was 93737 when bought by plaintiff on 11/26/14. The odometer reading was  
21 93737 when the vehicle was registered on 8/23/2016, 93737 when title first  
22 issued on 9/2/2016, and the odometer remains 93737 on the date of this  
23 amended complaint—because the vehicle at all times has "not [been] capable of  
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1 being driven under the power of its own 2.0-liter TDI engine". The electrical  
2 problem could be repaired, but plaintiff has been unwilling to do so because he  
3 will not knowingly place such a heavily polluting vehicle into service. Montana  
4 law allows plaintiff two years, until September 17, 2017, to discover VW's  
5 fraudulent behavior. VW has for many months refused to process a claim related  
6 to plaintiff's 2010 vehicle, and come to the conclusion that the plaintiff and his  
7 2010 vehicle is not class eligible, using as a sham pretense that the vehicle was  
8 not registered during the interim between its purchase and its titleing some 21  
9 months later. VW has acted in bad faith and with malice toward plaintiff by  
10 attempting to stall its determination that the vehicle is not class eligible until after  
11 the statute of limitation for the filing of this action has lapsed.  
12

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- 14 38. The class action settlement included a settlement matrix specifying the amounts  
15 of damages VW agreed to pay to owners of eligible violating vehicles. That  
16 matrix is *prima facie* evidence of the damages suffered by an owner of a violating  
17 vehicle. Per the settlement matrix, plaintiff's damages for the 2013 vehicle are  
18 \$23,897, and his damages for the 2010 vehicle are \$15,050.
- 19
- 20 39. A class action settlement in a related case against the Bosch defendants resulted  
21 in a settlement pursuant to which Bosch agreed to pay owners of eligible violating  
22 vehicles \$350 per vehicle. That settlement is *prima facie* evidence of the  
23 damages the Bosch defendants caused plaintiff for each of his two ineligible  
24 violating vehicles.
- 25
- 26 40. Defendants' fraudulent and malicious conduct warrants an award of punitive and  
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exemplary damages in an amount to be proven at trial.

**Count Two**  
**Montana Consumer Protection Act §30-14-101 et seq. MCA**

41. Plaintiff incorporates by reference all preceding paragraphs.
  42. The deceptive acts and practices of VW in concealing the true nature of the Violating Vehicles, as described in this Complaint, violates the Montana Unfair Trade Practices and Consumer Protection Act of 1973.
  43. Pursuant to §30-14-133 MCA plaintiff is entitled to treble damages and attorney fees.

**WHEREFORE** Plaintiff demands judgment against VW as follows:

1. For damages from VW in the amount of \$23,897 for his 2013 vehicle and \$15050 for his 2010 vehicle;
  2. For damages from the Bosch defendants in the amount of \$350 per vehicle;
  3. For trebling of damages the damages, provided however that the total amount awarded in this action not exceed \$75000;
  4. For exemplary and punitive damages for all defendants' fraudulent and malicious actions, provided however that the total amount awarded in this action not exceed \$75000;
  2. For an award of attorney's fees and costs as provided by any applicable provision of law, provided however that the total amount awarded in this action not exceed \$75000.
  3. For such other and further relief as the Court deems just and equitable,

1 provided however that such relief shall not result in a total amount  
2 awarded in this action exceeding \$75000.

3 DATED this 6<sup>th</sup> day of September, 2017.

4 KEVIN T. SWEENEY  
5 1250 15th St. West, Ste. 202  
6 Billings, Montana 59102

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ATTORNEY FOR PLAINTIFF

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Mail - jhealow@hotmail.com

4/14/2017

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## VWGoA Online Claims Portal - Customer Ineligible

C claims\_noreply@vwgoa.com  
Today, 12:21 PM  
You

Dear JAMES PATRICK HEALOW:

Based on the documents and information you have provided as part of your claim with Reference No. 161798337, the 2.0-Liter Settlement Claims Program. The reason(s) for your ineligibility is described below.

- Vehicle acquired from salvage/junkyard - You are not a member of the class because your title was branded purchased your vehicle from a junkyard or salvage yard after September 18, 2015.

If you believe you are entitled to claim benefits under the 2.0-Liter Settlement Claims Program, you may appeal to Court-appointed Claims Review Committee. The Claims Review Committee is composed of one representative from Settlement Class Counsel and a Court-appointed "Neutral" who will be called upon to resolve disagreements other members, should they arise. To submit an appeal to the Claims Review Committee, you must send a written Review Committee, P.O. Box 214500, Auburn Hills, MI 48321 or [crc@vwcourtsettlement.com](mailto:crc@vwcourtsettlement.com).

Your request must include the following information:

- Claimant's name, address, telephone number, VIN of the affected vehicle and Claim Reference Number
- You must also include a brief statement explaining why you believe the ineligibility determination was in error

After your claim is received and reviewed by the Claims Review Committee, you will receive a final determination.

This email is being sent from an account that does not receive replies. For questions or other issues related to the visit [www.VWCourtSettlement.com](http://www.VWCourtSettlement.com) or contact the Settlement Support Team at 1-844-98-CLAIM.

To ensure delivery to your inbox, add claims\_noreply@vwgoa.com to your address book.

EXH(B)T

